

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JASON SHEPPARD,

Plaintiff,

v.

MAURICE B. COHILL, JR.,

Defendant.

2: 15cv1402
Electronic Filing

Judge David Stewart Cercone
Chief Magistrate Judge Maureen P. Kelly

MEMORANDUM ORDER

The above-captioned prisoner complaint in mandamus was received by the Clerk of Court on October 28, 2015, and was referred to Chief United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges.

The Chief Magistrate Judge's Report and Recommendation (the "Report"), ECF No. 7, filed on January 7, 2016, recommended that the Complaint in Mandamus be transferred to the United States Court of Appeals for the Third Circuit pre-service pursuant to the Court's inherent power to control its own docket because the Complaint sought to compel the Honorable Maurice Cohill to comply with his alleged duties toward Mr. Sheppard. Service of the Report was made on Mr. Sheppard at his address of record. Mr. Sheppard was given until January 25, 2016, to file any objections. Mr. Sheppard filed Objections on January 15, 2016. ECF No. 9. None of the Objections merits rejection of the Report or extended comment.

In the Objections, Sheppard seeks to supplement the Complaint in Mandamus with evidence that he recently received. Even considering the supplemented evidence, the Objections do not merit rejection of the Report. The evidence allegedly supports the claim made in the Complaint in Mandamus. Be that as it may, Petitioner cannot escape the fact that in the Complaint in Mandamus, the specific relief he sought was an order directing Judge Cohill to "do his duty and refer this matter to a grand jury for a complete investigation into the violations of

the Plaintiff's Fifth and Sixth Amendment rights." ECF No. 6, at 5. Such an order can only be granted by the United States Court of Appeals for the Third Circuit.

Confronted by this reality, Sheppard in his Objections now changes tacks and says "Sheppard does not make a complaint alleging any wrongdoing by the defendant[.]" ECF No. 9 at 2. However, it is incontrovertible that he did allege wrongdoing by Judge Cohill. Sheppard asserted that "Cohill breached the duty owed to plaintiff by failing to rule on or properly investigate or refer to a Grand Jury for a complete investigation . . ." ECF No. 6 at ¶ 3.

Hence, the Report is correct and as this Court lacks jurisdiction to order a Senior District Judge of coordinate jurisdiction to do anything, including to rule on any motions made by Sheppard, the Complaint in Mandamus will be transferred to the United States Court of Appeals for the Third Circuit.

To the extent that Plaintiff seeks to have this Court refer any of Sheppard's allegations to a grand jury. The Court declines to do so, assuming that it may do so.

Sheppard has also filed a Motion for Sanctions and for a Show Cause Order to issue and for Evidentiary Hearing, etc. ECF No. 10. The Motion is hereby DENIED in light of the decision to transfer this case to the United States Court of Appeals for the Third Circuit.



David Stewart Cercone
United States District Judge

Date: ~~XXXXX~~ February 2nd, 2016

cc: The Honorable Maureen P. Kelly
Chief United States Magistrate Judge

Jason Sheppard
Inmate #155709
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219
(Via First Class Mail)